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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 1254-0230P	
	Application Number 10/618,762-Conf. #6012	Filed July 15, 2003	
	First Named Inventor Takeharu MURAMATSU et al.		
	Art Unit 2876	Examiner ST CYR, Daniel	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>39,491</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 50%; text-align: center;"> <p><i>Robert Doman #48222</i> Signature</p> <hr/> <p>Michael R. Cammarata Typed or printed name</p> <hr/> <p>(703) 205-8000 Telephone number</p> <hr/> <p>April 1, 2009 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Takeharu MURAMATSU et al.

Application No.: 10/618,762

Confirmation No.: 6012

Filed: July 15, 2003

Art Unit: 2876

For: CODE STRUCTURE AND CODE READING  
TERMINAL

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Examiner: D. St. Cyr

**REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Madam:

In addition to the Notice of Appeal which is being concurrently filed, Applicants respectfully request a Pre-Appeal Brief Conference to consider the issues raised in the Office Action dated December 1, 2008, that finally rejected claims 5, 8, 9, 11, and 14-18.

**Rejection under 35 U.S.C. § 103(a) – Roustaei, Moore**

The Examiner has rejected claims 5, 11, and 14 under the provisions of 35 U.S.C. 103(a) as being unpatentable over U.S. Application Publication 2001/0034222 (Roustaei) in view of WO 02/41101 (Moore). The Applicants respectfully submit that claims 5, 11, and 14 are patentable over Roustaei and Moore. Claimed elements which the rejection admits are missing from Roustaei are not taught in Moore, and the rejection does not address all claimed elements. Subsequently, the rejection does not address the claim as a whole. For a proper *prima facie* case of obviousness, knowledge of applicant's disclosure must be put aside in reaching a determination of obviousness, yet kept in mind in order to determine differences and evaluate the subject matter as a whole. Impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. See M.P.E.P. §§ 2141.02, 2142.

**Moore Fails to Disclose the Deficiency in Roustaei of the specific format of the bar code**

The Office Action admits that Roustaei fails to disclose “the specific format of the bar code, wherein the bar code includes a header code (an identifier) for identifying the type of data contains in the body so as to appropriately read/decode the code.” (Final Office Action at page 3, lines 1-3).

Instead, the Office Action relies on Moore for making up for this deficiency.

Applicants submit that Moore fails to make up for the deficiency of Roustaei of failing to disclose the specific format of the bar code, wherein the bar code includes a header code. In particular, Applicants submit that Moore does not to disclose a bar code.

Rather, Moore is directed to a method and system for transmitting data with enhanced security that conforms to a network protocol (Title). An objective in Moore is to provide a method and system for reducing network capacity by transmitting information in unsupported formats using existing network protocols. As an example, Moore teaches encrypting binary data (i.e. and unsupported format) and encoding the data into a standard HTTP format. An unencrypted, character-based packet identifier 510 indicates the type of data as binary data (Moore at page 10, under “Method”). As a further example, Moore teaches encoding data into “pair value” format compatible with standard HTTP GET/POST methods. The example encoded format is

“PacketIdentifier=DataIdentifier&EncryptedData=IntegrityData” (Moore at page 13). Applicants submit that Moore’s “PacketIdentifier” is not disclosed as being in the form of a bar code.

The rejection alleges that Moore teaches a data segment 500 comprising an ASCII packet identifier 510 indicating the type of data encrypted in the third segment 530 (body of data) and an unencrypted binary data identifier 520 used to identify the encryption key used to encrypt the data packet. (Final Office Action at page 3, lines 4-8).

Applicants submit that one of ordinary skill in the art would understand that neither an ASCII packet identifier nor a binary data identifier constitute a bar code.

Therefore, Moore fails to disclose “the specific format of the bar code, wherein the bar code includes a header code (an identifier) for identifying the type of data contains in the body so as to appropriately read/decode the code,” and subsequently fails to make up for the deficiency in Roustaei.

**The Rejection Fails to Address the Claimed “data identifying unit” and “control unit” and associated functions/steps**

The rejection alleges that Roustaei teaches a cellular phone (claimed cellular phone) comprising a high resolution imager accessory 31 (claimed code-reading terminal), a display window 35 for viewing the captured image, as well as a speaker 36 and microphone 37. The rejection alleges that Roustaei teaches that when a bar code image application is selected, the sensor image is processed by determining the area in the image containing the bar code, identifying the type of code in the bar code and decoding the code in the bar code (referring to para. 0038). Fig. 8 of Roustaei shows the steps that are alleged in the rejection and the associated steps are described in paragraph 0044.

According to Rule 104: “When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.”

The rejection does not particularly point out where in Roustaei the claimed elements of “data identifying unit” that recognizes said data identifier...,” and “control unit” that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data,” are disclosed.

**Applicants submit that because Roustaei does not teach a data identifier included in the bar code, it cannot teach the claimed “data identifier unit,” and “control unit,” as recited in claim 5. The same deficiency applies as well to claims 11 and 14. Similarly, because Moore does not disclose a bar code, it does not make up for this deficiency in Roustaei.**

For at least these reasons, Applicants submit that the rejection fails to establish *prima facie* obviousness. Accordingly, Applicants request that the rejection be reconsidered and withdrawn.

**Rejection Under 35 U.S.C. 103(a) – Arai, Moore**

The Examiner has rejected claims 5, 8, 9, 11, and 14-18 under 35 U.S.C. 103(a) as being unpatentable over JP 2002-125008 (Arai) in view of Moore. Applicants respectfully traverse this rejection. Note that Kokai is not a name.

**The Rejection Fails to Address the Claimed “data identifying unit” and “control unit” and associated functions/steps**

Claim 5 recites, among other things,

“a data identifying unit that recognizes said data identifier and estimates the type of said encoded data optically imaged by said imaging device based on said recognized data identifier; and

a control unit that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data.”

The rejection does not particularly point out where in either of the cited references, the claimed “data identifier unit” and “control unit” and associated claimed functions/steps are disclosed.

**Applicants submit that because Arai does not teach a data identifier included in the bar code, it cannot teach the claimed “data identifier unit,” and “control unit,” as recited in claim 5. The same deficiency applies as well to claims 11 and 14. Similarly, because Moore does not disclose a two-dimensional code, it does not make up for this deficiency in Arai.**

**Moore Fails to Make Up for the Deficiency in Arai of Failing to Disclose “the [two-dimensional] code includes a header code (an identifier)...”**

The rejection admits that Arai fails to disclose that the code includes a header code (an identifier) for identifying the type of data contained in the body so as to appropriately read the code.

Again, the rejection relies on Moore for making up for this deficiency.

Applicants submit that Moore fails to make up for the deficiency of Arai of failing to disclose that the [two-dimensional] code includes a header code (an identifier) for identifying the type of data contained in the body so as to appropriately read the code.

Rather as mentioned above, Moore is directed to a method and system for transmitting data with enhanced security that conforms to a network protocol (Title). An objective in Moore is to provide a method and system for reducing network capacity by transmitting information in unsupported formats using existing network protocols. As an example, Moore teaches encrypting binary data (i.e. and unsupported format) and encoding the data into a standard HTTP format. An unencrypted, character-based packet identifier 510 indicates the type of data as binary data (Moore at page 10, under “Method”). As a further example, Moore teaches encoding data into “pair value” format compatible with standard HTTP GET/POST methods.

The example encoded format is

"PacketIdentifier=DataIdentifier&EncryptedData=IntegrityData" (Moore at page 13). Applicants submit that Moore does not disclose encoding data as a two-dimensional code.

As in the rejection based on Roustaei, the rejection alleges that Moore teaches a data segment 500 comprising an ASCII packet identifier 510 indicating the type of data encrypted in the third segment 530 (body of data) and an unencrypted binary data identifier 520 used to identify the encryption key used to encrypt the data packet.

Applicants submit that one of ordinary skill in the art would understand that neither an ASCII packet identifier nor a binary data identifier constitute a two-dimensional code.

In any case, Applicants submit that Arai and Moore, either alone or in combination, do not teach optically imaging ASCII data, or at least recognizing optically imaged character data, and recognizing the optically imaged data.

For at least these reasons, Applicants submit that the rejection fails to establish *prima facie* anticipation. Accordingly, Applicants request that the rejection be reconsidered and withdrawn.

In view of the above, each of the claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Dated: April 1, 2009

Respectfully submitted,

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